United Nations A/72/287

General Assembly

Distr.: General
4 August 2017

Original: English

Seventy-second session
Item 71 (b) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretariat has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, prepared pursuant to General Assembly resolution 71/181.

* A/72/150.

17-13397 (E) 060917

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur analyses the challenges linked to combating racism, xenophobia and discrimination in the current counter-terrorism context. First, he discusses the various manifestations of racism, racial discrimination and xenophobia emerging from State counter-terrorism measures as well as the human rights implications of such practices for affected communities. He then provides an overview of relevant international, regional and national norms prohibiting racism and xenophobia, especially in the context of countering terrorism. Drawing from an expert meeting that he convened on the topic, he examines key legal, policy and institutional measures taken by relevant stakeholders and highlights some examples of good practices in combating racism, xenophobia and discrimination while countering terrorism.

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I. Activities of the Special Rapporteur

1. The present report is submitted pursuant to General Assembly resolution 71/181.

A. Country visits

2. The Special Rapporteur expresses his gratitude to the Governments of Australia and Fiji for the cooperation extended to him during his visits to these countries from 28 November to 5 December 2016 and 7 to 12 December 2016, respectively.[1]

3. The Special Rapporteur would like to thank the Governments of the United Kingdom of Great Britain and Northern Ireland and Morocco for inviting him to visit and hopes to honour these invitations soon. He further hopes to receive positive replies to his requests to visit India, Japan, South Africa, Thailand and the United States of America.

B. Other activities

4. The activities of the Special Rapporteur from July 2016 to March 2017 are reflected in his report to the Human Rights Council at its thirty-fifth session (A/HRC/35/41). Since March 2017, the Special Rapporteur has participated in a panel at the thirty-fourth session of the Human Rights Council, in March 2017, on the issue of racial profiling, as well as a commemorative event for the International Day for the Elimination of Racial Discrimination at the seventy-first session of the General Assembly on 21 March 2017.

5. The Special Rapporteur participated as a panellist at the first informal thematic consultation on human rights of all migrants, social inclusion, cohesion and all forms of discrimination, including racism, xenophobia and intolerance, which took place in Geneva on 8 and 9 May 2017, in the context of the global compact for safe, orderly and regular migration.

6. The Special Rapporteur was also invited to attend the informal meeting of the General Assembly in New York on 18 July 2017 to observe the annual Nelson Mandela International Day.

II. Challenges to combating racism and xenophobia in the context of countering terrorism

A. Introduction

7. The upsurge in terrorist attacks in recent times has prompted States in various regions of the world to adopt a variety of counter-terrorism measures. Despite the lack of consensus on a definition of terrorism, new frameworks have been adopted at the international, regional and national levels, obliging States to take measures to protect individuals from the threat of terrorist acts and to bring the perpetrators of such acts to justice. However, in many countries, counter-terrorism measures have provoked concern over human rights protection. Some States have adopted aggressive counter-terrorism legislation and policies, often used to target members of minority communities and religions. The Special Rapporteur has found that

[1] See A/HRC/35/41/Add.2 and Add.3.

counter-terrorism measures have disproportionately affected Muslims as well as migrants, refugees and asylum seekers. Such measures are not only contrary to the principles of equality and non-discrimination, but also prevent affected communities from fully enjoying a wide variety of other human rights.

8. In line with Human Rights Council resolution 7/34 of 2008, successive mandate holders have addressed the impact of counter-terrorism measures on the rise of racism, racial discrimination, xenophobia and related intolerance in their thematic and country visit reports. The present report builds on the work of the current and previous mandate holders,[2] as well as reports of other relevant special procedures mandate holders and United Nations bodies. It also takes into account recent developments and information gathered, notably through an expert meeting and additional research on the topic.

9. During the expert meeting, convened by the Special Rapporteur and held in Budapest on 22 and 23 June 2017, academics, practitioners and civil society representatives discussed the patterns and manifestations of racism, racial discrimination and xenophobia emerging from State counter-terrorism practices. After examining trends and challenges in different regions, participants exchanged views on the key legal and policy measures taken at the national, regional and international levels, as well as good practices in combating racism, xenophobia and discrimination while countering terrorism.

10. Drawing from the Special Rapporteur's analysis and with the benefit of insights from the expert meeting, the present report seeks to provide an updated overview of the manifestations of racism, xenophobia and discrimination in the context of countering terrorism (sect. II.B). The Special Rapporteur then provides an overview of key international, regional and national norms prohibiting racism and xenophobia, especially in the context of countering terrorism (sect. II.C). He also shares some examples of good practices in this context which were identified by the participants at the expert meeting (sect. II.D). The conclusions and recommendations are set out in section III.

B. Manifestations of racism, xenophobia and discrimination in the context of countering terrorism

1. Rise of political extremism and increased incidence of racist and xenophobic hate speech and violence

Rise of populist movements

11. The Special Rapporteur notes that one trend linked to the fight against terrorism is the rise of populist extremist movements. In Europe, the average vote share of populist parties has increased continuously since the 1980s, from 10.1 per cent in 1980 to 11.3 per cent in 2000 and 18.4 per cent in 2017. Populist parties are currently represented in nine governments and hold 17.5 per cent of all seats within European national parliaments.[3] While the rise of political extremism is a complex phenomenon, evidence shows that factors contributing to a favourable climate for the increasing acceptance of extremist ideology include widespread concerns over the global economic crisis and the rise in economic disparity, the spread of terrorism and the sharp increase in migration flows. The Special Rapporteur is equally concerned that more traditional parties have adopted tougher stances on issues such

[2] See, for example, A/HRC/9/12; A/HRC/20/33; A/HRC/29/46; A/HRC/35/41.

[3] European Policy Information Center, "TIMBRO authoritarian populism index 2017: a summary", 2017, pp. 1-2.

as security, migration and integration in order to counter the rise of right-wing populist parties.[4]

Rise of racist and xenophobic speech

12. The Special Rapporteur expresses concern that another trend which has intensified globally following recent terrorist attacks is the proliferation of anti-immigrant and anti-Muslim rhetoric, both in politics and the media. Populist parties, in particular, try to gain support and attract voters by capitalizing on constituents' fears over the financial burdens of migration and perceptions that foreigners are overrepresented in crime, take resources and jobs away from nationals, pose a threat to national identity or have religious practices that are incompatible with modern societies.[5]

13. In the 2017 elections of one European country, a right-wing populist party gained seats in parliament after running a campaign dominated by anti-Islam slogans, calling for a halt to Muslim immigration, the closure of mosques and a ban on the Qur'an.[6] Another right-wing populist party in Europe has suggested in parliament that immigrants should celebrate local religious holidays in order to become part of the nation.[7] In one South Pacific country, a nationalist far-right party ran a political campaign that utilized anti-Muslim rhetoric. The party made unexpectedly large gains in the 2016 parliamentary elections, resulting in greater bargaining power vis-à-vis the ruling party.[8]

14. The Special Rapporteur is concerned that racist and xenophobic speech has increasingly entered the mainstream discourse, a phenomenon that is mirrored in various regions of the world. In one Eastern European country, the Government and the national media initiated a public campaign against Muslims and foreigners. In 2015, the Government launched so-called "national consultations" by asking households to complete a survey on immigration and terrorism. The campaign was widely criticized for linking migration with terrorism and for its suggestive questions that actively promoted hostility and xenophobia. The results of the survey were subsequently used for an anti-immigrant billboard campaign. In addition, constitutional amendments were introduced to enshrine the Christian character of the nation.[9] Xenophobic rhetoric was also on the rise in another Eastern European country, with refugees being described as a dangerous threat to public health.[10]

15. Political actors in one Middle Eastern country have frequently associated the country's minority and their political aspirations in the region with radical Islam.[11] Similarly, political and religious actors in several Asian countries have promoted negative portrayals of Muslim ethnic minorities by linking them to terrorist groups or depicting them as dangerous and foreign invaders.[12]

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[4] European Union Agency for Fundamental Rights, *The European Union as a Community of Values: Safeguarding Fundamental Rights in Times of Crisis* (Luxembourg, Publications Office of the European Union, 2013), p. 17.

[5] Ibid.

[6] See https://perma.cc/T8PU-Z7HL; https://perma.cc/FCL3-7ZE3.

[7] See https://perma.cc/9MJ4-W6MC.

[8] See https://perma.cc/BV5Q-AS42; https://perma.cc/VT6L-DUH4.

[9] Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, "Fact-finding meeting: Hate motivated incidents targeting migrants, refugees and asylum-seekers in the OSCE region", December 2015, p. 4. See also https://perma.cc/D57P-9D4M.

[10] See goo.gl/MedFUj.

[11] See https://perma.cc/76SD-KUT3; https://perma.cc/948C-5U6F.

[12] See https://perma.cc/VJ9C-GYYR; https://perma.cc/R82Z-E8RN.

16. A rise in Islamophobic rhetoric can also be observed in some Latin American countries. In one South American country, for example, a popular news source published an article asserting that more than half of the Muslims in the world were radicalized.[13]

17. The Special Rapporteur notes that these examples demonstrate that the rise of anti-immigrant and anti-Muslim rhetoric in the mainstream political discourse is indeed a global phenomenon. However, he would also like to draw attention to the simultaneous increase in anti-Semitic speech. In many countries, anti-Semitism remains part of right-wing populist ideologies, often alongside Islamophobia.[14]

Role of political leaders and the media

18. The Special Rapporteur has previously expressed concern regarding the role of political leaders and the media in stigmatizing certain groups and thus fostering racist and xenophobic attitudes among the public.

19. In many countries, public officials and the media propagate prejudice and negative stereotypes regarding non-nationals and persons from minority communities or religions, including by linking them to violence and terrorism. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism explained how reports about a Syrian passport found on one of the perpetrators of the 2015 Paris attacks had fuelled fears concerning the connection between migration and terrorism. However, the Special Rapporteur highlighted the lack of evidence supporting claims that terrorists take advantage of migration flows or that refugees are more prone to radicalization. Research shows that very few migrants or refugees have carried out acts of terrorism.[15]

20. Political leaders in several Eastern European countries have made racist and xenophobic statements to further their own agendas. The Government of one country invoked a state of crisis by claiming that migration poses a threat to security, public health and national identity. The Prime Minister referred to migration as the "Trojan wooden horse of terrorism". He has frequently argued that measures taken to stop the influx of migrants, refugees and asylum seekers are necessary to protect the region from criminals and terrorists.[16] A minister of another Eastern European Government stated that, in the long run, migrant communities will form closed enclaves that provide support to terrorists.[17]

21. The media often perpetuates these stereotypes by disseminating or providing a platform for racists and xenophobic speech. The Special Rapporteur would also like to highlight that media bias is a particularly problematic phenomenon in a counter-terrorism context. The disproportionate coverage of certain types of terrorism, the use of certain terminology or images and the overall framing of news stories about terrorism distorts public perception. A recent study examined the domestic media coverage of terrorist attacks that occurred in one North American country during the period 2011-2015. The study found that attacks by Muslim perpetrators, particularly foreign-born Muslims, received 4.5 times more coverage than other attacks. Only a small proportion of attacks were perpetrated by Muslims (12.4 per cent) or foreign-born Muslims (5 per cent). Yet, these attacks received 44 per cent and 32 per cent of

[13] See https://perma.cc/BCQ5-HEWD.

[14] Lars Rensmann, "Resentment reloaded: how the European radical right mobilizes antisemitism and counter-cosmopolitanism", *Journal for the Study of Antisemitism*, vol. 3, No. 2 (2011), pp. 543-573.

[15] A/71/384, paras. 7-8.

[16] See goo.gl/Ly3Csp.

[17] See https://perma.cc/TR4G-RTVD.

the news coverage, respectively. Research also found that an attack is more likely to be considered an act of terrorism when carried out by a Muslim.[18] By contrast, threats posed by right-wing violence are often underestimated and not considered to be terrorism.[19]

Racist and xenophobic violence and hate crimes

22. In the context of the heightened fear of terrorism, racist and xenophobic speech is increasingly translated into hate crimes and violence towards certain groups. The Special Rapporteur is especially concerned about hate crimes targeting migrants, refugees and asylum seekers. Harassment and violent attacks against these groups were reported in several European countries. Where the perpetrators could be identified, they were most often found to be vigilante groups or individuals with ties to right-wing extremist groups.[20] Attacks in one Western European country included vandalism and arson attacks against refugee reception facilities. As compared with 2014, such xenophobic attacks increased drastically in 2015 and 2016.[21]

23. In some countries, an increase in violence towards Muslims can be observed in the aftermath of terrorist attacks. In one South American country, a drastic increase in anti-Muslim hate crimes was reported following widely televised terrorist attacks that occurred in 2015.[22] Terrorist attacks also affected the security of Muslim communities across Europe. In the aftermath of a 2015 attack, mosques in several European Union member States began to receive police protection. The national human rights institution in one country recorded 429 violent acts and threats motivated by Islamophobia in 2015, a 223 per cent increase from the previous year. Such incidents have reportedly become more violent and involved grenades, live ammunition and arson.[23] A recent report examining the intersectional discrimination affecting Muslim women found that, in many countries, the majority of Islamophobic hate crimes target Muslim women, especially those wearing headscarves.[24]

24. The Special Rapporteur also expresses concern that some Governments use the fight against terrorism as justification for the continuous repression of ethnic minorities. In response to a series of terrorist attacks, the Government of one East African country drastically increased the policing of ethnic and Muslim communities.[25] In 2014, over 6,000 police officers carried out home raids and arbitrarily arrested and detained almost 4,000 people in one particular neighbourhood. The majority of those affected were arrested on suspicion of terrorist links and belonged to the country's ethnic minority.[26] It was also alleged that, instead of being brought to court, many terrorist suspects were forcibly disappeared or killed extrajudicially.[27] In 2016, the Government of one Asian

[18] Erin M. Kearns, Allison Betus and Anthony Lemieux, "Why do some terrorist attacks receive more media attention than others?", 5 March 2017.

[19] United Nations Educational, Scientific and Cultural Organization (UNESCO), *Terrorism and the Media: A Handbook for Journalists* (Paris, 2017), p. 22.

[20] European Union Agency for Fundamental Rights, *Fundamental Rights Report 2017* (Luxembourg, Publications Office of the European Union, 2017), p. 79.

[21] European Union Agency for Fundamental Rights, *Current Migration Situation in the EU: Hate Crime* (Luxembourg, Publications Office of the European Union, 2016), p. 4.

[22] See https://perma.cc/LU7R-M9B7 (in Portuguese).

[23] See https://perma.cc/9JAT-6V7A.

[24] European Network Against Racism, "Forgotten women: the impact of Islamophobia on Muslim women", (Brussels, 2016), p. 26.

[25] See https://perma.cc/4X8V-XL2W.

[26] See https://perma.cc/P72G-4AJ7.

[27] Human Rights Watch, *World Report 2015: Events of 2014* (New York, 2015), p. 9.

country launched a violent counter-insurgency against one ethnic group, reportedly in retaliation for an attack that killed border police officers. Villages were burned and hundreds of civilians were beaten, raped or killed.[28]

2. Xenophobia and racism in immigration and border control policies

Freedom of movement

25. The Special Rapporteur notes that, in the light of increasing terrorist threats, some States have adopted measures aimed at preventing potentially dangerous individuals from entering a country, from travelling internally or from returning to a country where they have the right of abode. Aggressive counter-terrorism measures restricting freedom of movement have disproportionately affected persons from the Middle East.

26. In one Western European country, hundreds of people have been subjected to administrative bans, preventing them from leaving or entering the country since 2015.[29] Public authorities often justify those orders by resorting to counter-terrorism rhetoric.[30]

27. An executive order which was recently issued in one North American country suspended the refugee admissions programme for 120 days, stopping it indefinitely for refugees from a particular country. The order also imposed an entry-ban on nationals of seven Muslim-majority countries. National security concerns and the threat of terrorism were cited as justifications.[31] After the order had been blocked by lower courts, the country's Supreme Court has recently allowed a modified version to come into effect.[32]

Nationality

28. Similarly, the Special Rapporteur notes that legislative amendments in several Western Europe countries have made it easier for Governments to strip citizens of their nationalities if they are suspected of activities related to terrorism. Such amendments are particularly problematic where due process safeguards are not guaranteed. In some extreme cases, legislation does not require prior judicial authorization or allows for citizens to be stripped of their nationality while abroad.[33] The Special Rapporteur also expresses concern about a recent court ruling that could set a dangerous precedent for the discriminatory use of nationality-stripping measures in one Middle Eastern country. The judgment revoked the citizenship of an individual belonging to an ethnic minority on the basis of the Nationality Law, which allows for the revocation of citizenship for breach of loyalty to the State, including for terrorist acts.[34]

29. Many countries that have introduced nationality-stripping measures apply such measures to dual nationals only, thus ensuring that the removal of nationality does not result in statelessness.[35] However, the Special Rapporteur notes with concern

[28] See https://perma.cc/WH7G-KFCL.

[29] Bérénice Boutin, *Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards*, ICCT research paper (The Hague, International Centre for Counter-Terrorism, 2016), pp. 11-12. See also Amnesty International, "Dangerously disproportionate: the ever-expanding national security state in Europe" (London, 2017), p. 50.

[30] See https://goo.gl/1WY8tm.

[31] See https://perma.cc/7245-GKMC.

[32] See https://goo.gl/dHgm1R.

[33] Amnesty International, "Dangerously disproportionate", pp. 58-63.

[34] See goo.gl/aCnHjB; goo.gl/SwF6bJ.

[35] Amnesty International, "Dangerously disproportionate", p. 58.

that legislation in one country allows for the removal of citizenship of foreign-born nationals who hold no other nationality.[36]

Measures targeting refugees and asylum seekers

30. The Special Rapporteur was informed that, responding to fears concerning the link between terrorism and the influx of refugees, many countries have enacted overly restrictive migration policies and xenophobic measures targeting asylum seekers and refugees. One Eastern European country has tried to keep refugees and asylum seekers out of the country by proclaiming a "state of emergency due to mass migration".[37] The Government has empowered the police and military to support the asylum authority in instituting expedited border procedures in so-called "transit zones". At the same time, judicial review of asylum decisions has been limited. In addition, new amendments to the country's Criminal Code have led to the criminalization of refugees and migrants who enter the country irregularly through its southern border. The amendments allow for the imposition of a wide range of penalties, including criminal convictions, prison sentences and mandatory expulsion.[38]

31. Across several Western European countries, the Special Rapporteur observed situations in which Governments failed to fully comply with the international law principle of non-refoulement. Some countries have deported individuals identified as threats to national security, even though they face a serious risk of persecution when returning to their countries of origin. A deportation order in one country was issued despite the fact that the country's own protection appeal body had determined that the deported person was likely to experience torture if returned to his country of origin.[39]

32. The Special Rapporteur was informed that, in May 2016, the Government of one East African country planned the closure of a large refugee camp. Citing national security concerns as partly informing the decision, the Government announced that refugees living in the camp would be returned to their home countries. The decision was later revoked, as the country's High Court found that the closure of the camp was illegal on the grounds that it would discriminate against refugees belonging to one particular ethnic minority.[40]

33. The Special Rapporteur also notes with concern that prejudice and fear have manifested in inhumane policies towards Muslim refugees in the Asia-Pacific region. He concurs with the Special Rapporteur on the human rights of migrants, who criticized the practice of detaining refugees in offshore immigration detention facilities and regional processing centres. In particular, he expressed concern at the securitization of migration and border control, the punitive approach towards irregular migration and the wide range of human rights violations that have been documented in such facilities.[41]

3. Overly broad counter-terrorism legislation

34. The Special Rapporteur is concerned that, contrary to the principle of legality and the rule of law, many States have adopted legislation with vague and overly broad definitions of terrorism.[42] The penal and criminal codes of some European

[36] See from https://perma.cc/7VAG-Y4AW.
[37] See https://goo.gl/9rtivf.
[38] Amnesty International, "Dangerously disproportionate", pp. 21-22.
[39] Ibid., pp. 64-68.
[40] See https://perma.cc/F2CN-S2AS.
[41] A/HRC/35/25/Add.3, para. 33.
[42] Human Rights Watch, "Overreach: how new global counterterrorism measures jeopardize rights", 2017.

countries include vague terminology and definitions related to terrorism. Charges related to the incitement of terrorism increasingly refer to general terms such as "glorification" and "public provocation".[43] One Western European country even removed the requirement that incitement to terrorism pose an actual risk of a terrorism-related offence being committed.[44] In Europe, such vague legal definitions are often the result of right-wing populist initiatives fuelling fears of Muslim radicalization.

35. The Special Rapporteur notes that overly broad legislation creates legal uncertainty, leaves room for disproportionate and discriminatory application of counter-terrorism laws and sometimes results in the violation of fundamental human rights. Far-reaching and ambiguous definitions of terrorism and violent extremism have enabled many countries to criminalize the legitimate exercise of fundamental rights, including freedom of expression and freedom of peaceful assembly and of association.[45] In one North American country, Muslim charities feel particularly targeted by investigations, raids and asset seizures, creating the false impression of their involvement in terrorist financing.[46] In one European country, the so-called "apology of terrorism" offence has been used to charge hundreds of people, in particular Muslims, for posting comments on social media, even though these comments do not incite violence.[47]

36. Similarly, vaguely worded legislation has enabled public authorities in one Western European country to assume disproportionate powers with respect to counter-terrorism. A state of emergency has been enacted in order to address "public disaster" or a "serious threat to public order". In this context, political leaders and local government officials have been granted vast powers to impose a range of administrative measures, such as searches and house arrests, against individuals perceived as a threat. These measures are problematic in terms of access to justice and due process rights, as prior judicial authorization is not required and judicial oversight is generally limited. Moreover, the Special Rapporteur is concerned that the application of such measures is often disproportionate. Instead of being grounded in evidence, administrative measures often target Muslims and persons of North-African descent.[48]

37. The Special Rapporteur further expresses concern that, in some countries, overly broad counter-terrorism legislation has a negative and discriminatory impact on the human rights of indigenous peoples, including their economic, social and cultural rights. In one Latin American country, the use of vague counter-terrorism legislation has led to abuse and stigmatization of an indigenous population asserting their rights to self-determination and to their ancestral lands. Their activism and land protests continue to be characterized as terrorism, both in the media and the political discourse. The vague nature of domestic counter-terrorism legislation has allowed for its disproportionate application against members of the indigenous community. This has not only had a detrimental impact on the enjoyment of various human rights, but has also contributed to targeted violence and excessive force against the community by law enforcement officials.[49]

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[43] Bibi van Ginkel, "Incitement to terrorism: a matter of prevention or repression?", ICCT research paper, August 2011.

[44] See https://perma.cc/A7CV-98JA.

[45] See, for example, A/70/371; A/HRC/31/65, paras. 43-47; A/61/267; A/HRC/7/14, paras. 47-53; A/HRC/35/28/Add.1, paras. 6-28.

[46] A/HRC/35/28/Add.2, para. 67 (a).

[47] Amnesty International, "EU: Orwellian counter-terrorism laws stripping rights under guise of defending them", 17 January 2017.

[48] See https://perma.cc/BP5Z-QEVR; https://perma.cc/5R9F-JHNV.

[49] See CERD/C/CHL/CO/19-21; A/HRC/25/59/Add.2.

38. Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted that, in times of counter-terrorism, land evictions and house demolitions are sometimes used as forms of targeted or even collective punishment for residents who are suspected of supporting terrorist groups. According to the Special Rapporteur, such evictions tend to affect persons who find themselves in vulnerable situations, including indigenous peoples and ethnic, religious and other minorities.[50]

4. Surveillance of racial minorities and groups perceived as foreign

39. The Special Rapporteur is concerned that, in many countries, overly broad legislation has led to policing practices which target racial and ethnic minority communities. For instance, he has been informed that the police force in one North American city uses dragnet surveillance of the local Muslim community. Services at mosques are observed, entrances are filmed and daily reports are prepared on some Muslim individuals.[51] The surveillance has failed to provide any actionable intelligence and the matter has been brought before the courts.[52]

40. Similarly, in the light of global terrorist threats, the Government of one East Asian country initiated an extensive surveillance programme targeting Muslims. The programme allegedly had a disproportionate impact on migrants, as 90 per cent of Muslims living in the country are foreign born. An investigation revealed that police had surveilled 72,000 individuals from Muslim-majority countries in order to collect their personal information and to create résumé-like files on them. A high court later found those privacy violations to be legal because they were "necessary and inevitable" to protect the country from terrorism.[53]

41. The Special Rapporteur observed a similar trend throughout Western Europe. For instance, the 2015 surveillance law in one Western European country empowers the Prime Minister to authorize the use of surveillance measures, such as capturing mobile phone calls and black boxes from Internet service providers, for the purpose of protecting foreign policy interests. Prior judicial authorization is not required. More recently, with the goal of preventing terrorism, that same country extended surveillance to individuals suspected of "association" with someone who may constitute a threat.[54]

42. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also expressed concern regarding discriminatory surveillance and data-mining practices. For example, he criticized laws and policies on mass surveillance, which often provide asymmetrical protection regimes for nationals and non-nationals.[55] He also expressed concern about the use of terrorist profiles. In the wake of the terrorist attacks of 11 September 2001, authorities in one Western European country collected data on several million people. Search criteria included being of Muslim denomination or having links to specified countries with a predominately Muslim population.[56]

5. Impact on affected communities

43. The Special Rapporteur is concerned that the proliferation of xenophobic and Islamophobic rhetoric has resulted in an atmosphere of fear towards immigrants,

[50] A/HRC/6/17, para. 63.
[51] See https://perma.cc/RS5R-X42H.
[52] See https://perma.cc/NW95-XGJT.
[53] See https://perma.cc/8BSB-V7DL.
[54] See https://perma.cc/S2V7-GUMP.
[55] A/HRC/34/61, para. 33.
[56] A/HRC/4/26, para. 35.

Muslims and those perceived as Muslim. This is particularly the case in countries where Muslim identity is racialized or considered foreign. In a national security context, the rhetoric and fear contribute to the legitimization of violence and discriminatory acts of State officials. In many countries, affected groups and communities thus experience an increased incidence of racism and xenophobia, including hate crimes. Furthermore, the constant surveillance experienced by many minority and migrant communities has a chilling effect on their freedom of expression and undermines interpersonal and familiar relationships, as well as religious practice.

44. The Special Rapporteur notes that, in the absence of effective integration policies, experiences of racism and xenophobia are often accompanied by political, social and economic exclusion. This leads many minority and migrant communities to feel marginalized and alienated. A recent survey conducted in the European Union found that Muslim respondents who felt discriminated against and/or experienced harassment or violence because of their ethnic or immigrant background showed lower levels of trust in the legal system and the police, as well as a lower level of attachment to their country of residence.[57] Racially motivated hate crimes often go unreported because victims lack confidence in the ability or willingness of the police to provide them with access to justice and appropriate remedies.[58]

45. The Special Rapporteur expresses concern that the discrimination and exclusion experienced by certain groups in the context of counter-terrorism creates new grievances and escalates existing tensions between the majority and minorities in some countries. Concerns have been expressed that terrorist groups exploit such grievances in their recruiting strategies and that counter-terrorism measures may therefore have counter-productive effects. In the United Nations Global Counter-Terrorism Strategy ethnic, national and religious discrimination, political exclusion and socioeconomic marginalization are recognized as some of the factors conducive to the spread of terrorism.[59] In a preparatory report for the Strategy, it was argued that exclusion or discrimination on the basis of ethnic origin or religious belief, and the failure of many countries to integrate minorities or immigrants, create grievances that can be conducive to the recruitment of terrorist, including feelings of alienation and marginalization and an increased propensity to seek socialization in extremist groups.[60] While the Special Rapporteur agrees that such arguments are compelling, he emphasizes the need for further evidence-based research in this regard.

C. International, regional and national norms prohibiting racism and xenophobia, especially in the context of countering terrorism

46. The Special Rapporteur draws attention to the various legal and normative frameworks that have been adopted at the international, regional and national levels to curb racism and xenophobia while countering terrorism.

1. International standards

47. The Special Rapporteur recalls that the principles of equality and non-discrimination are enshrined in all core human rights treaties. While these

[57] European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey: Muslims — selected findings* (Luxembourg, Publications Office of the European Union (15 September 2017)).

[58] European Union Agency for Fundamental Rights, "European Union minorities and discrimination survey: main results" (2009), p. 135.

[59] See General Assembly resolution 60/288.

[60] A/60/825, para. 35.

treaties allow States to legitimately limit the exercise of some rights, provided that certain conditions are met, counter-terrorism measures imposing such limitations must not be discriminatory in nature. He further highlights that the principles of equality and non-discrimination have been recognized as norms of jus cogens from which no derogation is permitted, even in a state of emergency.

48. The International Convention on the Elimination of All Forms of Racial Discrimination calls for the elimination of racial discrimination in all its forms and manifestations. The Special Rapporteur considers the following provisions to be especially relevant in the context of countering terrorism: the right to security of person, the right to freedom of movement and residence, the right to leave any country and the right to nationality (art. 5 (b) and (d) (i)-(iii)).

49. The Durban Declaration and Programme of Action urge States to take measures to end xenophobia and racial discrimination against, inter alia, migrants, refugees and indigenous peoples. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence calls upon States to take measures to eliminate hate speech and discriminatory practices based on nationality, ethnicity, religion or belief.

50. The United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly in its resolution 60/288, is the first common strategic and operational framework to fight terrorism worldwide. Safeguarding the respect for human rights and the rule of law forms one of the four pillars of the Strategy. Its accompanying Plan of Action reaffirms that any measure taken to prevent and combat terrorism must comply with international law, including the Charter of the United Nations, human rights law, refugee law and international humanitarian law. The Strategy also stresses the need to address the structural conditions conducive to the spread of terrorism, including prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socioeconomic marginalization and lack of good governance.[61]

51. The Special Rapporteur welcomes the recent establishment of the United Nations Office of Counter-Terrorism to assist Member States in implementing the Strategy.[62] He is of the view that this reform provides an opportunity for better coordination and coherence of counter-terrorism efforts within the United Nations system. It also provides an opportunity for prompting a more integrated implementation of the four pillars, thus ensuring a balance between effective counter-terrorism measures and the protection and promotion of human rights.

52. The Special Rapporteur highlights that, since 2003, the General Assembly has adopted annual resolutions on the protection of human rights and fundamental freedoms while countering-terrorism. For example, in resolution 61/171 it reiterates that counter-terrorism measures should be implemented in full consideration of minority rights and must not be discriminatory on the grounds of race, colour, sex, language, religion or social origin. In resolution 63/185, it calls upon States not to resort to profiling based on stereotypes founded on grounds of discrimination, including discrimination on racial, ethnic and/or religious grounds.

53. A number of United Nations human rights mechanisms also have addressed the adverse human rights impact of counter-terrorism measures on certain groups. The Committee on the Elimination of Racial Discrimination, in its recommendation No. 30 (2004) on discrimination against non-citizens, called upon States parties to

[61] See General Assembly resolution 60/288, annex.
[62] See General Assembly resolution 71/291, para. 1.

ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.

2. Regional standards

54. The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (art. 14) and Protocol No. 12 thereto prohibit any kind of discrimination, while Protocol No. 4 to the Convention provides for freedom of movement (art. 2). The European Commission against Racism and Intolerance, in its general policy recommendation No. 8 (2004) on combating racism while fighting terrorism, recommends, inter alia, that States guarantee in a non-discriminatory way the freedoms of association, expression, religion and movement and ensure that no discrimination ensues from legislation and regulations or their implementation.[63] It also recommends that States ensure that their national legislation expressly includes the right not to be subject to racial discrimination among the rights from which no derogation may be made even in time of emergency.[64]

55. The African Charter on Human and Peoples' Rights provides for the right to freedom from discrimination of any kind (art. 2) and the right to freedom of movement (art. 12). In its Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa (2015), the African Commission on Human and Peoples' Rights emphasizes that terrorism must not be associated with any religion, nationality, civilization or group and that States shall ensure that counter-terrorism measures do not target individuals on a discriminatory basis, including on the grounds of race, ethnicity, colour, or national origin. Any measures taken to prevent and combat terrorism must comply with States' obligations under international human rights, humanitarian and refugee law. It also provides that States must not use combating terrorism as a pretext to unlawfully and arbitrarily restrict fundamental freedoms. When human rights abuses have occurred in the context of countering terrorism, States are obliged to ensure accountability and to provide those affected with an effective remedy and reparation.[65] Furthermore, the Protocol to the OAU Convention on the Prevention of Terrorism obliges States to outlaw the discriminatory and racist treatment of terrorist suspects (art 3.1 (k)).

56. The Organization of American States has adopted several instruments aimed at combating racism and xenophobia, including the American Convention on Human Rights and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. Once it has entered into force, the latter Convention obliges States parties to ensure that the adoption of measures of any kind, including those on security matters, does not discriminate directly or indirectly against persons or groups on the basis of race, colour, lineage or national or ethnic origin (art. 8).

3. National standards

57. The Special Rapporteur recalls that States have an obligation to ensure that national counter-terrorism legislation and policies and their implementation are in

[63] See European Commission against Racism and Intolerance, general policy recommendation No. 8 (2004) on combating racism while fighting terrorism, fifth recommendation to the Governments of member States.

[64] Ibid., sixth recommendation to the Governments of member States.

[65] See African Commission on Human and Peoples' Rights, "Principles and guidelines on human and peoples' rights while countering terrorism in Africa", 2015. Available from https://perma.cc/8TT6-MQ78.

compliance with international law, including human rights law, refugee law and humanitarian law. Any counter-terrorism measures must therefore comply with the principles of legality, necessity, proportionality and non-discrimination. He is pleased to note that many States have developed national standards in order to ensure that their domestic counter-terrorism frameworks comply with human right standards. Such measures include review mechanisms for draft legislation, oversight bodies and sunset clauses.[66] He has elaborated on some of these measures in the following section on good practices.

D. Good practices in combating racism, xenophobia and discrimination in the context of countering terrorism

58. The Special Rapporteur draws attention to examples of good practices that could be shared among different stakeholders and subsequently be replicated in, or adapted to, local contexts. While not exhaustive, the good practices described in the present report provide an overview of some of the legal, policy and institutional measures that have been adopted to combat racism, xenophobia and discrimination in the context of countering terrorism. The Special Rapporteur considers measures taken by various actors at different levels, including States, international and regional organizations, civil society and the private sector. It is, however, important to acknowledge that some practices may contain positive as well as some negative elements. A citation of such measures as good practices does not therefore imply an endorsement of all their aspects.

1. Non-discrimination provisions in laws and policies

59. The Special Rapporteur is pleased to note that many States have made progress in strengthening the rights to equality and non-discrimination on the grounds of race, religion, national or ethnic origin and other grounds by enshrining them in national legislation and policies.

60. The Special Rapporteur has observed that a growing number of States have codified prohibitions on racial discrimination and xenophobia — either in specific anti-discrimination legislation or included in other general legislation. States have included non-discrimination provisions in a variety of national legal instruments, including in laws incorporating the International Convention on the Elimination of All Forms of Racial Discrimination in domestic law, constitutions, criminal codes, migration and refugee laws, laws regulating the work of intelligence agencies and laws outlawing racial profiling. The Special Rapporteur welcomes such legislative initiatives and would further like to encourage States to integrate specific non-discrimination provisions into their domestic counter-terrorism laws.

61. The Special Rapporteur is pleased to note the adoption of national action plans, strategies and policies designed to combat racism and xenophobia and to promote the social integration of individuals belonging to minorities.[67] The Anti-Racial Discrimination Section of the Office of the United Nations High Commissioner for Human Rights provides States with practical guidance concerning the development and implementation of such national action plans.[68] The Special

[66] Counter-Terrorism Implementation Taskforce Working Group on Protecting Human Rights while Countering Terrorism, "Basic human rights reference guide: conformity of national counter-terrorism legislation with international human rights law" (New York, 2014), paras. 55, 61. See also A/HRC/16/51, para. 19; A/HRC/14/46, para. 13.

[67] A/HRC/26/50, para. 45; A/71/301.

[68] *Developing National Action Plans against Racial Discrimination: A Practical Guide* (United Nations publication, Sales No. E.13.XIV.3).

Rapporteur notes that a few countries have included explicit references to human rights and non-discrimination in their national policies on counter-terrorism. For example, the counter-terrorism strategy of Switzerland is aimed, inter alia, at preventing the stigmatization of minorities and discriminatory profiling practices.[69] In other countries, the principles of equality and non-discrimination have been integrated into various codes of conducts. In Mexico, the code of conduct for federal civil servants includes a non-discrimination provision.[70] In France, the code of conduct for the national police prohibits the discriminatory use of ethnicity, religion and national origin in targeting persons as suspects. The code applies to all national law enforcement officials, including those carrying out immigration and counter-terrorism functions.[71]

2. Oversight and accountability mechanisms

62. The Special Rapporteur notes with interest that some States have adopted measures designed to ensure the compliance of their domestic counter-terrorism frameworks with international human rights, refugee and humanitarian law. Such measures include the establishment of mandatory review procedures for proposed and existing counter-terrorism legislation and polices as well as the creation of oversight mechanisms for agencies involved in combating terrorism.

Review of draft legislation

63. The Special Rapporteur is pleased to note that a number of States have introduced procedures for assessing the potential human rights impact of draft legislation, including any adverse impact of counter-terrorism laws on certain groups. For example, the Attorneys General of New Zealand and Canada are required to report to Parliament where a bill appears to be inconsistent with the country's human rights obligations under domestic law.[72] Under the Human Rights Act 1998 of the United Kingdom, the Minister in charge of a bill is obliged to provide Parliament with a written statement as to the compatibility of the bill with the European Convention on Human Rights.[73] The Special Rapporteur considers such mechanisms to be important, as they ensure that the legislature is aware of the potential human rights implications when enacting or amending counter-terrorism legislation.

64. The Special Rapporteur highlights the important advisory role of national human rights institutions and equality bodies, which can lend their expertise to Governments by providing in-depth human rights impact assessments of draft counter-terrorism laws and policies.[74] The opinion of 17 March 2016 of the French Commission nationale consultative des droits de l'homme on the draft law on fighting organized crime and terrorism is a good example. In this opinion, the Commission expressed concern regarding the expansion of law enforcement powers with respect to identity checks. The Commission criticized, inter alia, the failure to include safeguards against the discriminatory application of these powers.[75]

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[69] Switzerland, Federal Council, "Strategie der Schweiz zur Terrorismusbekämpfung" (September 2015), sect. 5.1 (in German).

[70] A/71/301, para. 77.

[71] Commission nationale de déontologie de la sécurité, saisine No. 2009.77.

[72] Canada, Department of Justice Act, sect. 4.1 (1985); New Zealand, Bill of Rights Act, sect. 7 (1990).

[73] United Kingdom of Great Britain and Northern Ireland, Human Rights Act, chap. 42, sect. 10 (1998).

[74] See Council of Europe, "National human rights structures: protecting human rights while countering terrorism", 6 December 2016. Available from https://perma.cc/TV74-629K.

[75] Légifrance, "Avis sur le projet de loi renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale", 4 June 2016.

Ongoing oversight and review

65. The Special Rapporteur learned that, in order to ensure consistency with human rights standards, some States have created oversight mechanisms tasked to review counter-terrorism legislation, practices and powers.[76] Such mechanisms can take various forms, including internal, executive, parliamentary, judicial and specialized bodies.[77] In addition, some States have included sunset clauses, which require the periodic renewal of counter-terrorism laws or certain provisions within them.[78]

66. The Special Rapporteur considers such mechanisms to be important, as they ensure ongoing review of counter-terrorism measures, thus allowing for assessment as to their legality, necessity, proportionality and effectiveness. Governments are encouraged to continuously reflect on, and make adjustment to, counter-terrorism laws and practices that are found to be inconsistent with human rights standards and the principle of non-discrimination. The review of the Anti-Terrorism Act by the Commissioner for Human Rights of Poland is one example. In 2016, the Commissioner challenged the Anti-Terrorism Act before the Constitutional Tribunal. He argued that the new legislation was inconsistent with the country's human rights obligations, inter alia, because some provisions target foreign nationals and provide asymmetrical protection regimes for Polish citizens and non-nationals.[79]

67. Moreover, oversight mechanisms ensure ongoing review of counter-terrorism powers conferred upon both State agencies and private security entities. Where discretionary powers are conferred, oversight mechanisms provide safeguards against, and accountability for, the arbitrary, unreasonable or discriminatory use of such powers against certain groups. They also help to prevent the normalization or de facto permanent existence of extraordinary powers introduced to fight terrorism.[80] The Special Rapporteur has previously addressed the important role of law enforcement oversight bodies in addressing practices such as racial and ethnic profiling. Strengthening such bodies becomes even more important as law enforcement powers are extended in the context of counter-terrorism.[81]

68. Finally, the Special Rapporteur notes that some oversight mechanisms are authorized to receive and handle individual complaints by victims of racial discrimination. For example, Denmark, Norway and Sweden have special law enforcement officers attached to the office of the Prosecutor-General who receive and investigate complaints against police officers.[82] The Special Rapporteur believes that oversight mechanisms with a complaint handling function can play a crucial role in ensuring access to justice and remedies.

69. Examples show that oversight mechanisms can make an important contribution towards combating racism, xenophobia and discrimination in a counter-

[76] European Commission for Democracy through Law (Venice Commission), "Report on counter-terrorism measures and human rights", 4 June 2010.

[77] Counter-Terrorism Implementation Taskforce Working Group on Protecting Human Rights while Countering Terrorism, "Basic human rights reference guide"; A/HRC/16/51; A/HRC/14/46.

[78] See, for example, United Kingdom, Terrorism Prevention and Investigation Measures Act, chap. 23, sect. 21 (2011); Canada, Combating Terrorism Act, *Statutes of Canada* (Bill S-7), chap. 9, clause 12 (2013); Australia, Security Legislation Amendment (Terrorism) Act, No. 65, sect. 4 (2002).

[79] See Poland, Office of the Commissioner for Human Rights, "The Commissioner for human rights challenges the Anti-Terrorism Act before the Constitutional Tribunal", 11 July 2016. Available from https://perma.cc/NHA7-J364.

[80] Counter-Terrorism Implementation Taskforce Working Group on Protecting Human Rights while Countering Terrorism, "Basic human rights reference guide"; A/HRC/16/51; A/HRC/14/46.

[81] See, in particular, A/71/301; A/HRC/29/46.

[82] A/HRC/29/46, paras. 52-54; A/71/301, para. 66.

terrorism context. However, the Special Rapporteur recalls that the extent of this contribution depends on a variety of factors, including the mandate and statutory powers of relevant mechanisms, the availability of adequate resources and the existence of independent civilian mechanisms within multilevel systems of oversight.[83]

Role of the judiciary

70. The Special Rapporteur wishes to underline the central role of judicial review in combating racism, xenophobia and discrimination in the context of countering terrorism. He is pleased to note that many States empower the courts to strike down any laws that are incompatible with human rights standards, or to adopt an interpretation of the legislation that is in compliance with international human rights law.[84]

71. In some countries, the judiciary has used these powers to review counter-terrorism legislation or provisions. For example, the High Court of Kenya prevented the planned closure of a refugee camp allegedly for reasons of national security. The Court held that a closure would be illegal and discriminatory as it targeted refugees of one particular ethnic minority.[85] In 2015, the country's High Court also struck down proposed amendments to its anti-terrorism legislation.[86]

72. Since the introduction of the state of emergency, the French courts have played an important role in contesting house arrest measures against individuals deemed to be a threat to national security. This is particularly important as these administrative measures do not require prior judicial authorization and have reportedly been used disproportionately against Muslims and other minorities.[87] French courts may also be key in reviewing plans to normalize emergency powers by codifying them in normal criminal and administrative law.[88]

73. The judiciary in the United States of America was instrumental in temporarily suspending an executive order which planned to ban nationals of seven Muslim-majority countries from entering the country. Following legal proceedings in several State entities, the country's Supreme Court has recently allowed a modified order to enter into effect. However, the Court imposed significant limitations and will hear arguments on the case later in 2017.[89]

74. Similarly, a recent Supreme Court ruling in the United Kingdom strengthened the procedural rights regarding out-of-country deportation appeals. The Court clarified that those affected must be granted the right to appeal in a domestic court before being deported. While the case concerned foreign criminals, the reasoning applies equally to anyone being deported or removed, including terrorist suspects affected by nationality-stripping measures.[90]

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[83] Counter-Terrorism Implementation Taskforce Working Group on Protecting Human Rights while Countering Terrorism, "Basic human rights reference guide"; A/HRC/16/51; A/HRC/14/46.

[84] Counter-Terrorism Implementation Taskforce Working Group on Protecting Human Rights while Countering Terrorism, "Basic human rights reference guide", para. 57; A/HRC/16/51.

[85] See https://perma.cc/6775-C3CM.

[86] See Peter Kagwanja, "Ruling on anti-terrorism law a triumph for Kenya's judiciary", Daily Nation, 28 February 2015. Available from https://perma.cc/JK7E-WFCZ.

[87] See, for example, https://goo.gl/YT71yK.

[88] Human Rights Watch, "France: don't 'normalize' emergency powers".

[89] Sabrina Siddiqui, "Why the Supreme Court's travel ban ruling may not be a win for Trump", *The Guardian*, 26 June 2017.

[90] United Kingdom, Supreme Court, *Kiarie and Byndloss, R (on the applications of) v. Secretary of State for the Home Department*, [2017] UKSC 42, Judgment of 14 June 2017.

75. In Germany, the judiciary has contributed to a shift in the approach towards far-right violence. In the past, public authorities and the judiciary had failed to consider organized attacks against refugees, including bombings and arson attacks against refugee shelters, as terrorism. The recent trial against the so-called Freital group was the first time that members of a right-wing extremist group have been tried for terrorism.[91]

3. Collection of disaggregated data

76. The Special Rapporteur reiterates the importance of systematically recording, collecting and publishing disaggregated data on racial and xenophobic discrimination, hate speech and hate crimes.[92] He is pleased to note that some States have developed data collection systems on hate crimes, including crimes committed against individuals on the grounds of race, colour, ethnicity, origin or minority status, citizenship and religion. He was informed that some States collect data specifically on racist crimes committed by members of extremist groups. He welcomes these initiatives. He also highlights that, in the absence of official statistics in some States, national human rights institutions and non-governmental organizations play a central role in collecting disaggregated data on hate crimes.[93] In Greece, the Racist Violence Recording Network documents racist incidents and analyses the quantitative and qualitative trends relating to racist violence in the country. Stakeholders respect the principle of confidentiality and incidents are reported to the network without any reference to personal data.[94] The Network also issues recommendations to the Government and assists relevant authorities with their implementation. While noting various gaps and areas of improvement, the Network expressed general satisfaction over the Greek authorities' response to its recommendations. For example, the Government followed recommendations to appoint special prosecutors on racist crimes in several cities — a good practice identified by the Network on the basis of the data that it had collected.[95]

77. In the context of counter-terrorism, the Special Rapporteur recalls the importance of disaggregated data collection. Data enables States to assess the effectiveness of counter-terrorism legislation and policies and their impact on certain groups. It can, for example, detect laws or practices that focus disproportionate attention on racial and ethnic minorities on the basis of stereotypes linking them with crime and terrorism. On the basis of this knowledge, States can design targeted measures aimed at addressing the negative human rights implications of counter-terrorism measures. Data also allows the effectiveness of such interventions to be evaluated. Furthermore, data serves as a tool to increase transparency and accountability of actors with counter-terrorism powers. This is particularly important as many States have provided law-enforcement agencies and local authorities with extensive discretionary powers regarding identity checks, stops and searches and the use of administrative measures. Finally, data gives a voice and face to victims and therefore improves their access to justice and remedies.

78. The Special Rapporteur appreciates that some States systematically gather disaggregated data on law enforcement practices. In some countries, this has led to

[91] See Ben Knight, "Terror trial in Dresden for Freital neo-Nazi group", Deutsche Welle, 6 March 2017. Available from https://perma.cc/4WGA-CYEE; European Civil War, "What is the 'German right-wing terrorist' 'Freital Group'? And what can it teach us about processing resistance", available from https://perma.cc/87M8-HCSN.

[92] See, in particular, A/70/335.

[93] A/HRC/26/50, para. 46.

[94] A/HRC/32/50/Add.1, paras. 35-38.

[95] Racist Violence Recording Network, "Annual report 2016", pp. 17-19.

informed changes in policing practices, making law enforcement officials more professional in their conduct towards racial and ethnic minorities as well as the general population. For example, British law obliges the police in England and Wales to record ethnically disaggregated data on stop-and-search practices. Police forces in some countries are required to issue receipts to persons who have been stopped, which include details of the reason for the stop and the identity both of the person concerned and of the police officer.[96] The municipality of Fuenlabrada, Spain, has developed a similar initiative with the support of the European Commission.[97] The Special Rapporteur encourages such initiatives as they are key in eliminating racial profiling and in improving trust in the police within minority communities. Forms recording police encounters could also provide victims of racial profiling with evidence to be used when seeking remedy. The Special Rapporteur also learned that the Legal Aid Society of New York City launched the "Cop Accountability Program", a database containing information about wrongdoing by local police officers. The database was set up to help public defenders in court hearings regarding the misconduct of police officials. Using such information to monitor the performance of law enforcement agents can reduce their individual discretionary powers by obliging them to rely on objective indicators of suspicion rather than on subjective factors when deciding whom to stop. This good practice has been shown to lead to increased police efficiency.[98]

4. Training

79. Various United Nations human rights mechanisms have emphasized the importance of human rights education and training on non-discrimination for law enforcement and other relevant officials involved in combating terrorism.[99] The Special Rapporteur is therefore pleased to note that many States have intensified and expanded such training activities, which encompass general training, training on racist and xenophobic hate speech and crimes and training on specific counter-terrorism practices.

80. In Mexico, the Instituto Nelson Mandela was created to carry out training on equality and non-discrimination for the general public and civil servants.[100] Other countries have introduced diversity and cultural sensitivity trainings in various parts of the public sector.[101] Greece issued recommendations to combat rising racist and xenophobic violence, including through improved training of the police and the judiciary on racist crimes.[102] Similarly, Spain has developed a training project aimed at educating local police and security forces on identifying racist and xenophobic incidents.[103]

81. The Special Rapporteur was also made aware of different examples of training undertaken by law enforcement agencies to eliminate racial and ethnic profiling carried out by their staff. The federal criminal investigation department of Belgium has two experts on Islam, who provide advice and training to police officers with counter-terrorism responsibilities and encourage them not to rely on stereotypes or

[96] A/HRC/29/46, para. 62.
[97] Ibid.
[98] Ibid.
[99] See, for example, CERD/C/CHL/CO/19-21, para. 14; Committee on the Elimination of Racial Discrimination, general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights; A/64/211, para. 53 (j); A/HRC/35/41/Add.1, para. 112; A/HRC/23/56/Add.2, para. 84; A/HRC/23/56/Add.1, para. 84; A/HRC/32/50/Add.1, para. 71.
[100] A/71/301, para. 77.
[101] A/HRC/29/46, paras. 56-57.
[102] A/HRC/32/50/Add.1, para. 21.
[103] A/HRC/23/56/Add.2, para. 24.

profiling.[104] With regard to training for law enforcement, the Special Rapporteur found that practical training linked to specific powers, actions and activities of law enforcement is the most effective.[105]

82. The Special Rapporteur acknowledges that discriminatory anti-terrorism practices cannot be eradicated by training measures alone. Nevertheless, training for law enforcement personnel can make a significant contribution to combating racism and xenophobia in a counter-terrorism context. Training helps to educate relevant actors on anti-discrimination law and unconscious biases, to raise awareness on the prevalence and consequences of discrimination and to identify methods for increasing trust between various stakeholders.[106] As a wide variety of stakeholders are involved in the fight against terrorism, training should target those actors at the national and local levels (e.g. members of the judiciary and public prosecutors; police forces, intelligence services and security personnel; border control and immigration officials; teachers, journalists, internet service providers and social media platforms).

5. Education and awareness-raising

83. The Special Rapporteur reiterates the crucial role of education in deconstructing prejudices and stereotypes, promoting tolerance, understanding and diversity and creating new values and attitudes. It therefore plays an important role in countering the negative influence of populist movements and the anti-Muslim and anti-immigrant rhetoric these promote. In many countries, such rhetoric leads to the association of certain groups with terrorism and consequently manifests in increased experiences of racism and xenophobia.

84. The Special Rapporteur is pleased to note that some States have recognized the importance of education and awareness-raising initiatives for the prevention and elimination of racism, racial discrimination, xenophobia and related intolerance. In Argentina, the large influx of Syrian refugees and the fears of a terrorist attack have fuelled Islamophobia. To counter these sentiments, the country has prepared an awareness-raising and training plan for all schools. The plan aims to combat ignorance and prejudice towards Muslims by educating students about the history of Islam and Muslim beliefs, thus elucidating the prejudices linking Muslims and Arabs with terrorism.[107] Other good practices include public campaigns and awareness-raising activities designed to foster tolerance and respect for cultural diversity. These include the organization of cultural events, forums and seminars and the publication of literature. The Special Rapporteur encourages such initiatives as these provide space for intercultural dialogue and interaction.

85. Finally, the Special Rapporteur recalls that the media has a fundamental role to play in educating the public, promoting tolerance and combating hate speech. The recommendations made in his 2014 report to the Human Rights Council, in which he addressed the challenges of racism and hate speech on the internet and social media, can serve as examples of good practices to be followed.[108] The Argentinian Media Ombudsperson is another example of good practice identified by the Special Rapporteur. The Ombudsperson is mandated, inter alia, to conduct research on the role played by the media in stigmatizing certain populations and fostering

[104] Rachel Neild, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices* (New York, Open Society Foundations, 2012), p. 133.

[105] A/HRC/29/46, para. 71.

[106] European Union Agency for Fundamental Rights, *Fundamental Rights Report 2017*, p. 9.

[107] See Alan Soria Guadalupe, "Capacitarán a alumnos para que entiendan de qué se trata el islam", *La Nación*, 13 September 2016. Available from https://perma.cc/3ZB9-C6GF.

[108] A/HRC/26/49.

xenophobia among the public. The Special Rapporteur welcomes this good practice and encourages the media and journalists to work with the Ombudsperson to develop voluntary ethical codes of conduct and self-regulatory measures, policies and practices to combat racism. He also encourages States to ensure diversity of voices through incentives and support to community media providing visibility and voice to victims of racism.[109]

III. Conclusions and recommendations

86. The upsurge in terrorist attacks in recent times has prompted States in various regions of the world to adopt a variety of counter-terrorism measures. While the Special Rapporteur acknowledges the necessity for States to take measures to combat terrorism, he nonetheless expresses his concern that certain groups are disproportionately affected by counter-terrorism measures. Such measures are not only contrary to the principle of non-discrimination, but also prevent affected communities from fully enjoying a wide variety of other human rights.

87. The Special Rapporteur recalls that, in line with General Assembly resolution 60/288 on the United Nations Global Counter-Terrorism Strategy, the prevention of racism, racial discrimination, xenophobia and related intolerance should be an integral part of any strategy to prevent and fight against terrorism. In this regard, he also recalls general recommendation No. 30 (2004) on discrimination against non-citizens of the Committee on the Elimination of Racial Discrimination, according to which States parties must ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin. The Special Rapporteur recommends that States incorporate concrete measures and adequate mechanisms to prevent racism and xenophobia into their national counter-terrorism frameworks. Such measures include non-discrimination provisions in relevant legal and policy documents as well as the establishment of appropriate oversight mechanisms tasked to review counter-terrorism legislation, practices and powers.

88. The Special Rapporteur reiterates that the systematic collection of disaggregated data is particularly important in the context of counter-terrorism. He recommends the collection of disaggregated data and statistics on the number of cases of racism and xenophobia reported to the authorities, including the percentage of investigations and prosecutions undertaken following such complaints and their outcome. He also recommends that States collect data on law enforcement practices and the use of administrative measures. In that regard, he encourages States to promote the implementation of good practices, such as the use of registration forms for the police to record all identity checks or house searches. Such forms could provide the victims of racial profiling with a record of their encounter with the police that could be used as proof when seeking remedy.

89. Furthermore, the Special Rapporteur recommends that States ensure adequate resources for human rights and non-discrimination training for all relevant officials involved in combating terrorism. He emphasizes that training efforts need to be accompanied by comprehensive education and awareness-raising initiatives. In particular, the Special Rapporteur calls for sustained public campaigns and initiatives to be undertaken to change the social

[109] A/HRC/35/41/Add.1, paras. 80-81 and 114-116.

perception and public attitude towards Muslims, migrants, asylum seekers and refugees. The media, political and religious leaders play an important role in combating hate speech and stereotypes. In this regard, the Special Rapporteur recommends that the highest levels of government and the leadership of all political parties adopt clear, strong and unequivocal positions against racism and racial discrimination. Similarly, the media must refrain from xenophobic stereotyping, scapegoating and racist remarks. Such acts should be duly investigated and prosecuted and the media and journalists should adopt a code of good conduct containing provisions against racism and xenophobia.

90. **As the present report is the last submitted by the current mandate holder, the Special Rapporteur would like to thank the members of the General Assembly for the privilege and opportunities that he has had to engage with them and to serve in this capacity.**